

**POINTS OF AGREEMENT  
ON  
STATE AND FEDERAL PROCESSES FOR SETTING  
WATER QUALITY STANDARDS FOR THE BAY-DELTA ESTUARY**

1. EPA has proposed and received public comments on draft water quality standards for the Bay-Delta Estuary pursuant to Section 303(c)(3) and 303(c)(4) of the Clean Water Act (33 U.S.C. § 1313(c)(3), (4)). EPA will take final action on the proposed standards by December 15, 1994. These standards are intended to supersede and supplement 1991 SWRCB standards disapproved by EPA relating to estuarine habitat and other fish and wildlife uses of the Bay-Delta Estuary. Upon its approval of State-submitted standards meeting the requirements of the Clean Water Act, EPA will initiate necessary rulemaking action, consistent with the Clean Water Act, to withdraw the Federal standards. Prior to any action on State-submitted standards, EPA will consult with USFWS and NMFS as required by Section 7 of the Federal Endangered Species Act (16 U.S.C. § 1536).

2. Commencing with workshops in April 1994, SWRCB will update and revise its 1991 Water Quality Control Plan for the Bay-Delta Estuary, including revision of the State standards to meet Federal Clean Water Act requirements, and will release a new draft Plan by December 1994. The workshops will solicit comments and recommendations from interested parties on the scope of the review, the level of protection that should be provided to fish and wildlife beneficial uses, the alternatives available to achieve that level of protection, and related issues.

3. The results of this process will be used to prepare a draft water quality control plan and an evaluation of the environmental and economic effects of the draft plan and its alternatives pursuant to all applicable provisions of the California Water Code, the Federal Clean Water Act, and the California Environmental Quality Act (CEQA). A hearing will be held approximately 60 days after the release of the draft plan to solicit comments on the draft plan. The SWRCB will then consider adoption of the draft plan at a subsequent public meeting. After adoption of the plan and its approval by the California Office of Administrative Law (OAL), the new or revised water quality standards contained in the plan that are subject to Federal authority will be submitted to EPA for its review and approval.

4. The SWRCB will initiate a water right proceeding for the purpose of allocating responsibility to comply with water quality standards meeting the requirements of the Clean Water Act among the water right holders in the Bay-Delta watershed and to establish terms and conditions in appropriate water right permits. A CEQA document (probably an EIR) will be prepared before adoption of a water right decision.

5. The SWRCB will seek agreement with the California Department of Water Resources and the U.S. Department of the Interior to operate the SWP and CVP to make an equitable contribution to meeting the standards, starting in calendar year 1995, while the

SWRCB is working on a water rights decision to equitably allocate responsibility among water right holders in the Bay-Delta watershed.<sup>1/</sup>

6. The time schedule for these State Board activities is provided below.

- \* March 1994      Distribute workshop notice initiating review of the water quality control plan
- \* April-July 1994      Conduct workshops to receive input on the 1994 following subjects, and possibly others:
  - April - EPA/Federal Ecosystem Directorate proposed standards
    - Level of protection necessary for the Bay-Delta Estuary
  - May - ESA issues
    - Western Delta industrial diversions
    - Other Delta diversions
    - Striped bass
  - June - Exotic species
    - Fishery declines from other causes
    - Operations by CVP/SWP for ESA and other species of concern
    - Effects of projects other than SWP/CVP
  - July - Potential methods of economic analysis
    - Recommendations for alternative standards
    - Interim implementation of standards by SWP/CVP during 1995 and until water rights decision is implemented
- \* July-November 1994      Analyze data and write draft Water Quality Control Plan
- \* December 1994      - Release draft Water Quality Control Plan and Notice of Hearing to Consider Plan
  - Negotiate agreements for compliance with draft standards during 1995 and until water rights decision is implemented (see footnote #1)
- \* January 1995      Commence SWP/CVP operations under interim compliance standards<sup>2/</sup>

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1. It may be possible for the standards to be phased, with the initial phase implemented by the projects during the water rights hearings. Compliance with Endangered Species Act requirements affecting the Bay-Delta may result in actions which contribute to or result in meeting the standards' initial phase.

2. Because of procedural complexities and numbers of diversions affected, the water rights process could take up to two years to complete.

- \* February 1995      Conduct Water Quality Control Plan hearing
- \* March 1995        Adopt Water Quality Control Plan
- \* June 1995          Commence water rights process

# **FRAMEWORK AGREEMENT**

## **BETWEEN THE GOVERNOR'S WATER POLICY COUNCIL OF THE STATE OF CALIFORNIA AND THE FEDERAL ECOSYSTEM DIRECTORATE**

This Memorandum of Agreement (Agreement) is entered into between the Governor's Water Policy Council of the State of California (Council) and the Federal Ecosystem Directorate (FED). The purpose of the Agreement is to establish a comprehensive program for coordination and communication between the Council and the FED with respect to environmental protection and water supply dependability in the San Francisco Bay, Sacramento-San Joaquin Delta Estuary and its watershed (Bay-Delta Estuary). In particular, this Agreement is intended to provide for increased coordination and communication with respect to:

- Substantive and procedural aspects of water quality standard setting;
- Improved coordination of water supply operations with endangered species protection and water quality standard compliance; and
- Development of a long-term solution to fish and wildlife, water supply reliability, flood control, and water quality problems in the Bay-Delta Estuary.

### **RECITALS**

1. The Agreement set forth in this document is in acknowledgement of the critical importance of the Bay-Delta Estuary to the natural environment and economy of California, in recognition of the multiple, complex resource management decisions that must be made to stabilize, protect, restore, and enhance the Bay-Delta Estuary, and in appreciation of the close interconnection of Federal and State interests and responsibilities in the Bay-Delta Estuary.

2. In April 1992, Governor Pete Wilson announced a comprehensive water policy for the State of California. That policy was aimed at meeting the needs of all the State's water users for safe, reliable water supplies while mitigating for past water-related harms to fish and wildlife and restoring and maintaining fish and wildlife populations and habitat. Governor Wilson placed special emphasis on solving the problems of the Bay-Delta Estuary, recognizing it as "the centerpiece of California's most intractable water problem."

3. As part of his policy, the Governor announced that he would appoint an Oversight Council to help guide the State's long-term planning and decision-making process.

On December 9, 1992, the Governor created the Bay-Delta Oversight Council (BDOC) and directed it to develop a comprehensive program to protect and enhance the Bay-Delta Estuary by addressing water quality issues, design and operation of water export systems, levee and channel maintenance, and means of protecting the Bay-Delta Estuary and its fish and wildlife resources. He proposed using the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 *et seq.*) and the National Environmental Policy Act NEPA (42 U.S.C. § 4321 *et seq.*) as the planning framework for the decision-making process.

4. Also on December 9, 1992, Governor Wilson created the California Water Policy Council consisting of representatives of eight State departments and agencies with responsibilities for implementing State water policy. Governor Wilson charged the Council with sharing information and coordinating activities related to the State's long-term water policy.

5. The Governor's water policy also directed the State Water Resources Control Board (SWRCB) to work closely with the U.S. Environmental Protection Agency (EPA) to develop interim water quality standards for the Bay-Delta Estuary. The SWRCB released a draft interim water right decision in December 1992, but subsequently withdrew it. On March 25, 1994, the SWRCB announced plans to hold additional workshops, and to prepare a draft water quality control plan for release in December 1994.

6. On September 10, 1993, the U.S. Bureau of Reclamation (USBR), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS) and EPA signed an Agreement for Coordination creating the Federal Ecosystem Directorate with the goal of coordinating Federal resource protection and management decisions in the Bay-Delta Estuary and its watershed. Federal responsibilities affecting the Bay-Delta Estuary include listing species as threatened or endangered and conducting consultations under the Federal Endangered Species Act, implementing the Central Valley Project Improvement Act (CVPIA) (Public Law 102-575, Title XXXIV), operating the Central Valley Project, reviewing and, where necessary, promulgating water quality standards under the Clean Water Act (33 U.S.C. § 1251 *et seq.*), and reviewing water development proposals under the Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*), NEPA, Section 404 of the Clean Water Act (33 U.S.C. § 1344), and the Rivers and Harbors Act (33 U.S.C. § 401 *et seq.*). The Agreement for Coordination also states the Federal agencies' commitment "to work closely with all involved agencies of the State of California and the Federal government so that, to the greatest extent possible, our implementation of Federal law in the Bay-Delta Estuary complements the State's role in allocating water resources and the State's continuing efforts to preserve, protect, and enhance the natural resources of the estuary."

7. On December 15, 1993, the FED announced a series of coordinated actions and proposals to protect the fish and wildlife resources of the Bay-Delta Estuary. These included EPA's proposed water quality standards under the Clean Water Act, USFWS and NMFS actions to protect winter-run salmon, delta smelt and Sacramento splittail under the Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*), and USFWS and USBR proposals under the CVPIA.

8. Additional water management and resource protection and management actions by State and Federal agencies with responsibility in the Bay-Delta Estuary will be required over the next several years. Close coordination between affected State and Federal agencies is desirable to achieve regulatory consistency and certainty and provide environmental protection in a manner which minimizes impacts on the State's economy and water resources.

9. There are three areas in which Federal-State coordination and cooperation with respect to the Bay-Delta Estuary are particularly important:

a. **Water Quality Standards Formulation.** Under the Federal Clean Water Act and the State of California's Porter-Cologne Act (Cal. Water Code § 13000 et seq.), the SWRCB and the EPA have complementary and closely related roles with respect to formulation of water quality standards for the Bay-Delta Estuary. Therefore, coordination between EPA and SWRCB is vital if adequate Bay-Delta protections are to be achieved and maintained.

b. **Coordination of Federal and State Project Operations with Regulatory Requirements.** There are numerous hydrological, contractual, and operational connections between the Federal Central Valley Project (CVP) and the State Water Project (SWP). These include the Coordinated Operation Agreement, approved by Congress in 1986 (Public Law 99-546); joint obligations to meet State water quality standards, State water rights permits, and Federal and State endangered species requirements; and joint ownership and operation of San Luis Reservoir and San Luis Canal (the Joint-Use Facilities). The projects face a shared challenge in reconciling operational requirements with current and future statutory and regulatory requirements, particularly those relating to endangered species and water quality. Close coordination is necessary to identify operational issues related to statutory and regulatory compliance and to provide a forum for addressing problems and issues promptly as they arise.

In recognition of the complexity of fishery, habitat, water quality, and hydrodynamic issues confronting resource managers in the Bay-Delta Estuary, State and Federal agencies have participated for several years in the scientific study effort known as the Interagency Ecological Program (IEP). The IEP serves as an example of State-Federal cooperation in the Bay-Delta Estuary. The IEP data base and its programs provide a valuable source of scientific information as efforts are made to coordinate operational requirements with regulatory compliance.

c. **Long-Term Bay-Delta Solution.** State and Federal interests and responsibilities in the Bay-Delta Estuary are inextricably intertwined in the areas of fish and wildlife protection and enhancement, water quality protection, flood control, and water supply project operation. There is a shared State-Federal interest in pursuing long-term solutions that adequately address the multiple environmental, economic, and water supply interests in the Bay-Delta ecosystem. Federal and State agencies with responsibilities in the Bay-Delta Estuary must participate. Neither the Federal nor the State government, acting alone, can accomplish this vital task.